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ABSTRACT

The information presented here describes the Federal and State Laws that school officials must adhere to with respect to student records. The sections of the Education Amendment Act of 1974 that deals with the maintenance and release of student records, protection of the rights and privacy of parents and students, protection of pupil rights, and limitation on withholding of Federal funds are listed. The Nebraska State Statutes also delineate specific responsibilities that school district employees accept when student records exist. These deal with such aspects as: listings under everything in the folder, parents may challenge records, personally identifiable records, data-gathering, over 18 children, parents must be told of rights, experimental programs and limitations. Suggested guidelines accompany each category of law. Included under guidelines complying with Nebraska State Law are sections on categorizing student records, academic records, behavioral/disciplinary reports, maintaining student records, academic or administrative records, behavioral/disciplinary records, security of student records, and destruction of records. (Author/AM)

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STUDENT RECORDS

Protection of the Rights and Privacy of Parents and Students

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The issue of a student's right to privacy has come to the forefront of educational concerns in recent years. The Education Amendment Act of 1974 contains sections that deal directly with the maintenance and release of student records. Nebraska State Statutes also delineate specific responsibilities that school district employees accept when student records exist. The enclosed information presents the Federal and State laws that school officials must adhere to with respect to student records. Suggested guidelines accompany each category of law. Questions regarding the interpretation of these laws should be referred to an attorney.

FEDERAL LAW

EDUCATION AMENDMENTS OF 1974

CONFERENCE REPORT
(To accompany H.R. 69)

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

SEC. 513. (a) Part C of the General Education Provisions Act is further amended by adding at the end thereof the following new section:

"PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS"

"SEC. 438. (a) (1) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy of denying, or which effectively prevents, the parents of students attending any school of such agency, or attending such institution of higher education, community college, school, preschool, or other educational institution, the right to inspect and review any and all official records, files, and data directly related to their children, including all material that is incorporated into each student's cumulative record folder, and intended for school use or to be available to parties outside the school or school system, and specifically including, but not necessarily limited to, identifying data, academic work completed, level of achievement (grades, standardized achievement test scores), attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns. Where such records or data include information on more than one student, the parents of any student shall be entitled to receive, or be informed of, that part of such record or data as pertains to their child. Each recipient shall establish appropriate procedures for the granting of a request by parents for access to their child's school records within a reasonable period of time, but in no case more than forty-five days after the request has been made.

"(2) Parents shall have an opportunity for a hearing to challenge the content of their child's school records, to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein.

"(b) (1) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy of permitting the release of personally identifiable records or files (or personal information contained therein) of students without the written consent of their parents to any individual, agency, or organization, other than to the following--

"(A) other school officials, including teachers within the educational institution or local educational agency who have legitimate educational interests;

"(B) officials of other schools or school systems in which the student intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

"(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 409 of this Act), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection; and

"(D) in connection with a student's application for, or receipt of, financial aid.

"(2) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school,agency offering a preschool program, or any other educational institution which has a policy or practice of furnishing, in any form, any personally identifiable information contained in personal school records, to any persons other than those listed in subsection (b)(1) unless--

"(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

"(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

"(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: Provided, That, except when collection of personally identifiable data is specifically authorized by Federal law, any data collected by such officials with respect to individual students shall not include information (including social security numbers) which would permit the personal identification of such students or their parents after the data so obtained has been collected.

"(4) (A) With respect to subsections (c)(1) and (c)(2) and (c)(3), all persons, agencies, or organizations desiring access to the records of a student shall be required to sign a written form which shall be kept permanently with the file of the student, but only for inspection by the parents or student, indicating specifically the legitimate educational or other interest that each person, agency, or organization has in seeking this information. Such form shall be available to parents and to the school official responsible for record maintenance as a means of auditing the operation of the system.

"(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

"(C) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

"(D) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

"(E) No funds shall be made available under any applicable program unless the recipient of such funds informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

"(F) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

"(G) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section, according to the procedures contained in section 434 and 437 of this Act.".

(b)(1)(i) The provisions of this section shall become effective ninety days after the data of enactment of section 438 of the General Education Provisions Act.

(2)(i) This section may be cited as the "Family Educational Rights and Privacy Act of 1974".

PROTECTION OF PUPIL RIGHTS

SEC. 514. (a) Part C of the General Education Provisions Act is further amended by adding after section 438 the following new section:

"PROTECTION OF PUPIL RIGHTS

"SEC. 439. All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section 'research or experimentation program or project' means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques".

(b) The amendment made by subsection (a) shall be effective upon enactment of this Act.

LIMITATION ON WITHHOLDING OF FEDERAL FUNDS

SEC. 515. (a) Part C of the General Education Provisions Act is further amended by adding after section 439 the following new section:

"LIMITATION ON WITHHOLDING OF FEDERAL FUNDS

"SEC. 440. Except as provided in section 438 (b)(1)(D) of this Act, the refusal of a State or local educational agency or institution of higher education, community college, school,agency offering a preschool program, or other educational institution to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this section, reasonable notice and opportunity for a hearing shall be afforded the applicant.".

(b) The amendment made by subsection (a) shall be effective upon enactment of this Act.

"GUIDELINES: COMPLYING WITH FEDERAL LAW"
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Suite G-12, Washington, D.C. 20037.

STUDENT RIGHTS AND PRIVACY IN H.R. 69

A school which "effectively prevents" parents from reviewing and inspecting "all official records, files, and data directly related to their children" could lose its Federal funding under the Education Amendments of 1974, now on the President's desk for signature. This applies, as the law says, to any school, state or local educational agency, institution of higher education, community college, agency offering a preschool program, or "other educational institution."

Everything In The Folder - The material which is open to parental inspection must include everything in the child's cumulative record folder, including identifying data; scores on standardized intelligence, achievement, and aptitude tests; academic work completed; level of achievement--which means grades and standardized achievement test scores; attendance data; interest inventory results; health data; family background information; teacher or counselor ratings; and observations and verified reports of "serious or recurrent" behavior patterns. And a parent's request to see these materials must be honored within 45 days of the time he makes it.

Parents May Challenge Records - Parents are also to have opportunity for a hearing to challenge the content of the school records and to request deletion of "inaccurate, misleading, or otherwise inappropriate data contained therein."

Personally Identifiable Records - But after specifying that parents can see school records, the law goes on to forbid that right to third parties except where parents have given written consent. In other words, schools, SEAs, and LEAs may lose their Federal aid if they "permit the release" of personally identifiable records or

files of students to anyone except: school officials and teachers "who have legitimate educational interests"; the officials of a school to which a student is transferring (and then only if the parents know about it and can see the transfer record); and Federal and state education officers (if the records are necessary in connection with audit and evaluation of Federally supported education programs or enforcement of Federal legal requirements under such programs). Personally identifiable data may also be released in connection with a student's application for, or receipt of, financial aid.

Data-Gathering - The Department of Health, Education, and Welfare is to "adopt appropriate regulations" to protect the privacy of students and their families in surveys or data-gathering activities conducted by the Federal government, with controls on the use, dissemination, and protection of the data. And all data-gathering activities must be authorized by law.

Over 18 - When a student becomes 18 years of age or goes off to college, the permission and consent required before anyone can see his records becomes the student's business, not his parents'. "The rights accorded to the parents of the student shall thereafter only be required of and accorded to the student," the law says.

Parents Must Be Told of Rights - There is also a threat of withdrawal of Federal funds from "any applicable program" if parents (or students, if they are 18 or older) are not informed of their rights concerning student records.

But HEW is told that for all failures of compliance with the privacy regulations, denial of funds is to occur only after it has determined that compliance cannot be secured by voluntary means. An office and review board is to be established in HEW for the purpose of "investigating, processing, reviewing, and adjudicating" violations and complaints.

Experimental Programs - In a further step to protect students' rights, the law amends the General Education Provisions Sec. 514, Part C, to add that: "All instructional material including teachers' manuals, films, tapes, or other supplementary instructional materials which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project."

"For the purpose of this section," the law says,"'research or experimentation program or project' means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques."

There Are Limitations - Having stipulated students' and parents' rights to "privacy and confidentiality" on personally identifiable data, and the penalties schools will let themselves in for if they violate the rules, the law goes on to strengthen educators hands in dealings with the Federal government. If an educational institution refuses, on the grounds that it constitutes a violation of privacy, to give "any Federal office, agency, department" personally identifiable data, the law says that refusal will not constitute sufficient grounds for termination or suspension of Federal aid, or prejudice the chances of funding in future.[2]

School personnel directly involved with the student in the educational process may review the student's record. They should acknowledge such a review by signing a statement which contains a listing of persons who have viewed the student's file. The intent of this provision is to grant parents a means of auditing the information release system operating in the school.

NEBRASKA STATE STATUTES

79-4,157. Pupil, parents, guardian, teacher, counselor, school administrator; school files; access; disciplinary material; removed and destroyed upon pupil's graduation.

Any pupil in any public school, his parents, guardians, teachers, counselors, or school administrators shall have access to the school's files or records maintained concerning him. No other person shall have access thereto nor shall the contents thereof be divulged in any manner to any unauthorized person. All such files or records shall be so maintained as to separate academic and disciplinary matters and all disciplinary material shall be removed and destroyed upon the pupil's graduation or after his continuous absence from the school for a period of three years, and after authorization is given by the State Records Board pursuant to sections 84-1201 to 84-1220.

79-4,158. School board; board of education; official policy respecting personnel files and student records; rules and regulations; adopt; publish; restrictions.

The school board or board of education of each school district shall adopt and publish an official policy respecting personnel files and student records, which policy shall not conflict in any manner with the rules and regulations of the State Records Administrator adopted pursuant to sections 84-1201 to 84-1220.[3]

GUIDELINES: COMPLYING WITH NEBRASKA STATE LAW

Categorizing Student Records - State law requires that schools separate disciplinary matters from academic matters. The following options suggest two organizational methods of meeting that requirement.

Academic Records - This category includes material that must be maintained to insure the proper operation of a school system. It may contain:

1. Birthdate
2. Parents or guardians names and addresses
3. Grades and academic work completed
4. Attendance data
5. Sex
6. Scores on standardized achievement, aptitude or interest tests
7. Extracurricular activities
8. Health data

Behavioral/Disciplinary Reports - Comments referring to student behavior should be confined to objective statements pertaining to specific actions performed by the student. This file may include but is not limited to:

1. Statements from teachers, counselors, or administrators concerning academic performance or personality characteristics
2. Home environment information
3. Reports of parent/teacher conferences
4. Records of disciplinary action taken against the student by school officials

Maintaining Student Records

Academic or Administrative Records - Schools shall maintain a file in this category for each pupil as provided for in the Nebraska Rules and Regulations for Approval of Public School Districts. The record card containing information

considered basic to identifying the student and his/her academic performance should be on file for an indefinite period.

Behavioral/Disciplinary Records - These files must be maintained as being distinctly separate from the academic records. Changes in a student's behavior should be accompanied by school personnel making appropriate revisions in that student's record. Student files should contain only relevant and accurate information. All such files are to be destroyed once the student graduates from school or after he/she is absent from school for three continuous years.

Security of Student Records - Since the school system and its employees are responsible for the prudent use of student records, it is imperative that confidential records be secured under lock and key except during periods of examination by authorized persons.

Destruction of Records - The destruction of disciplinary information about a student must occur upon his/her graduation from high school or after he/she has been absent from school for three continuous years. School personnel can obtain the authorization forms necessary to destroy student records by contacting the Records Management Division at the State Capitol in Lincoln. (Please note Appendix A).

APPENDIX A

SECRETARY OF STATE
RECORDS MANAGEMENT DIVISION

APPLICATION FOR AUTHORITY FOR RECORDS ACTION

Date September 3, 1974 RMA #

Department -------- Public Schools Division

Title of Records Student Records -- Disciplinary Material

Dates 1950 - 1974 Graduates Volume 50 cu. ft. Arrangement Alphabetical

Statutes Affecting Retention RRS 1943, 1973 Supp. Sec. 79-4,157: All disciplinary material shall be removed and destroyed upon the pupil's graduation or after his continuous absence from the school for a period of three years.

DESCRIPTION AND USE

A SHORT GENERAL DESCRIPTION OF THE TYPES OF MATERIALS INCLUDED IN THESE FILES MAY BE GIVEN HERE.

EXAMPLE

AUTHORIZATION REQUESTED: (Check one)

[X] a. Disposal of present accumulation of non-current records
[ ] b. Establish retention schedule for current records
[ ] c. Microfilm and retain originals (For Security)
[ ] d. Microfilm and destroy originals
[ ] e. Transfer to Records Center or other storage
[ ] f. Transfer to State Historical Society for permanent retention
[X] g. Continuing Authority

SUBMITTED BY: Official's Signature (Name of official) Superintendent (Title)

Request Approved Denied Reason

Approved by
State Records Committee

Secretary of State — Name — Title

Director, Records Management — Name — Title

State Archivist — Name — Title

RMA 1

Retain blue copy as temporary record
Send remaining copies to Records Mgmt.
Pink Copy will be returned as final
Authorization

NOTES and BIBLIOGRAPHY

1. Education Amendments of 1974, House of Representatives, Conference Report #93-1211

2. Education Daily, Volume #7, No. 159, August 16, 1974, pp. 2-3

3. Revised Statutes of Nebraska 1943, 1973 Supplement, 79-4,157, 79-4,158

4. "Guidelines for the Collection, Maintenance and Release of Pupil Records," Education Update, Minnesota Department of Education, November 1973

5. "Children, Parents and School Records," National Committee for Citizens in Education, April 1974